

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BAUM RESEARCH AND DEVELOPMENT  
CO., INC., ETC., ET AL.,

Plaintiffs,  
HONORABLE AVERN COHN  
v.

No. 98-72946

HILLERICH & BRADSBY CO., INC.,  
ETC., AT AL.,

Defendants.

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JURY TRIAL - VOLUME 31

Wednesday, February 2, 2005

- - -

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- - -

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Proceedings recorded by mechanical stenography.  
Transcript produced by computer-aided transcription.

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1 Q. Now, are you familiar with Easton's wood bats, the Stix  
2 bats?  
3 A. No, I am not directly familiar with it. It's a wood  
4 bat.  
5 Q. It's a wood bat. It's a pretty new wood bat, isn't it?  
6 A. They just purchased the company, as far as I know.  
7 Q. Correct. And since it's wood, it's also wood-like,  
8 right?  
9 A. That's correct.  
10 Q. Okay.  
11 THE COURT: No, it's wood. I mean is is is.  
12 MR. ETtinger: You are right, Your Honor.  
13 BY MR. ETtinger:  
14 Q. Are you aware that the Stix bat sells six times as many  
15 bats -- this new bat, wood bat already sells six times as  
16 many bats as Baum Research does?  
17 A. You are talking about wood bats?  
18 Q. Right.  
19 A. That wouldn't surprise me.  
20 Q. Now, when you say 60 percent market share, are you  
21 including all the wood bat sales in there, too?  
22 A. I'm including the, in my mind the market that would  
23 open up if it became wood-like. The wood bat --  
24 Q. I'm asking a very specific question. If you have  
25 60 percent and everybody else has 40 percent, does the

1 December 2002 deposition, you said you did not, and you  
2 later discovered that you owned one and you had not been  
3 aware of it; is that correct?  
4 A. I didn't recall it at the time.  
5 Q. Okay. It didn't leave the shelf a lot?  
6 THE COURT: Mr. Ettinger, please.  
7 MR. ETtinger: I'll go on, Your Honor.  
8 BY MR. ETtinger:  
9 Q. You don't subscribe to any physics or engineering  
10 journals, do you Mr. Baum?  
11 A. No, I don't.  
12 Q. And you never have?  
13 A. That's, as I recall, that's not completely true. In  
14 the steel business we did subscribe to technical bulletins.  
15 Q. Why don't you turn to your December 9, 2002 deposition,  
16 Page 35.  
17 A. Which one?  
18 Q. December 9, 2002.  
19 MR. ROMANO: What was the page reference?  
20 MR. ETtinger: 35.  
21 BY MR. ETtinger:  
22 Q. I'm going to ask you about Lines 23 through 25.  
23 A. What page am I on?  
24 Q. 35, Mr. Baum.  
25 A. Okay.

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1 40 percent include all the wood bats, all the composite  
2 bats, all of the aluminum bats that qualify, every bat there  
3 is; is that your calculation, is that your estimate?  
4 A. In my mind I am not including in that figure the wood  
5 bats that are traditionally used.  
6 THE COURT: Let's move on, Mr. Ettinger.  
7 MR. ETtinger: Okay.  
8 BY MR. ETtinger:  
9 Q. Mr. Baum --  
10 MR. ETtinger: I was right there anyhow,  
11 Your Honor.  
12 BY MR. ETtinger:  
13 Q. Mr. Baum, you are not an expert in physics, are you?  
14 A. No, I am not.  
15 Q. You don't have a degree in physics, do you?  
16 A. No, I do not.  
17 Q. You have not taken any physics courses since  
18 high school?  
19 A. That is correct.  
20 Q. You have not even looked at a physics textbook in many  
21 years, have you?  
22 A. I think that's correct.  
23 Q. You don't own a physics textbook, do you?  
24 A. I do.  
25 Q. That's right. When I asked you this in your

1 Q. Now, there at Lines 23 through 25 did I ask you the  
2 following question and did you give me the following answer.  
3 "Q. Have you ever subscribed to any physics or  
4 engineering journals?  
5 "A. No."  
6 Was that the testimony?  
7 A. That's as I recalled it then.  
8 Q. Thank you. Now, you used the term torque in your  
9 direct testimony. You don't know the formula for torque, do  
10 you, Mr. Baum?  
11 A. No.  
12 Q. And you talked a lot about bat-ball impact. You cannot  
13 explain the particle model for bat-ball impact, can you?  
14 A. I'm glad I can't.  
15 Q. Excuse me?  
16 A. No, I can't.  
17 Q. And you talked about deformation of the ball, but you  
18 cannot explain the deformable body model of the ball-bat  
19 impact, can you?  
20 A. No.  
21 Q. You talked a lot about the BPF. You don't know the  
22 formula for the BPF, do you, Mr. Baum?  
23 A. The formula is stated in the protocol.  
24 Q. If I asked you to write the formula on the easel right  
25 here, could you do it?

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1 A. By stretching, I might be able to remember it, but it's  
 2 always in front of me so I don't bother to commit it to  
 3 memory.  
 4 Q. I don't want to make this too much of a memory test,  
 5 but I would like to see if you could just roughly do it.  
 6 Let me just grab the easel, if I might.  
 7 By the way, I said, you understood I said BPF, not  
 8 BESR?  
 9 A. No, you said BESR.  
 10 Q. No, I didn't. In any event, the question is BPF. Do  
 11 you know the formula --  
 12 A. No, no, no.  
 13 Q. Okay. Now, we have seen a lot of graphs and charts of  
 14 yours with a lot of numbers on them, but you are not a  
 15 statistician, are you?  
 16 A. No.  
 17 Q. And you have never used tests of statistical  
 18 significance, have you?  
 19 A. No, not on a practical basis.  
 20 Q. And you don't know what specific tests people doing  
 21 scientific investigations use to decide whether a result is  
 22 or is not statistically significant, do you?  
 23 A. No, I don't.  
 24 Q. And you do agree, you certainly testified, that there  
 25 are multiple variables that determine batted-ball speed,

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1 correct?  
 2 A. There are multiple variables, that is correct.  
 3 Q. And you certainly believe you have to control for those  
 4 variables in analyzing batted-ball speed, correct?  
 5 A. Yes.  
 6 Q. But you don't use statistical techniques to control for  
 7 those variables, you would rather leave that to the people  
 8 who want to spend their time doing that, correct?  
 9 A. Yes.  
 10 Q. Now, you have never submitted an article on the Baum  
 11 Hitting Machine to any professional or academic journal,  
 12 have you?  
 13 A. Myself, no.  
 14 Q. Right. You have never published any books on the Baum  
 15 Hitting Machine or engineering or baseball, have you?  
 16 A. It's on the website.  
 17 Q. I'm asking whether you have published a book, Mr. Baum.  
 18 A. A book, no.  
 19 Q. You are not an expert on safety statistics, are you,  
 20 Mr. Baum?  
 21 A. No.  
 22 Q. Mr. Baum, I want to turn to center of gravity and  
 23 moment of inertia, which certainly came up many times in  
 24 your direct testimony. You said, and I think these are your  
 25 exact words, I have got the trial testimony here, that in

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1 layman's terms center of gravity and moment of inertia are  
 2 basically the same. Do you recall saying that?  
 3 A. Yes, I do.  
 4 Q. And you used the terms center of gravity and MOI pretty  
 5 much interchangeably in your testimony, didn't you?  
 6 A. To make it simple, yes.  
 7 Q. And you in fact don't know the mathematical  
 8 relationship between center of gravity and moment of  
 9 inertia, do you?  
 10 A. The mathematical relationship?  
 11 Q. Right.  
 12 A. I know how they are both determined, but the -- I don't  
 13 understand your question.  
 14 Q. There are formulas --  
 15 A. That's correct.  
 16 Q. -- that describe center of gravity and moment of  
 17 inertia, are there not?  
 18 A. The center of gravity is the balance point on a bat.  
 19 Q. If one pulls out a physics textbook, one will find  
 20 formulas for how you calculate center of gravity and how you  
 21 calculate moment of inertia, correct?  
 22 A. That is correct.  
 23 Q. And they are different formulas, correct?  
 24 A. That is correct.  
 25 Q. Do you know either such formula?

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1 A. Off the top of my head, no.  
 2 Q. Excuse me?  
 3 A. No, not that I could say it right here.  
 4 Q. Do you know the mathematical relationship between  
 5 center of gravity and moment of inertia?  
 6 A. I know the relationship between MOI and CG follow each  
 7 other pretty much.  
 8 Q. I'm asking you can you describe the mathematical  
 9 relationship between the two.  
 10 A. No, I can't.  
 11 Q. And you do have a place on your test data sheets for a  
 12 moment of inertia number, and it's called MMI; isn't that  
 13 right?  
 14 A. Yes, mass moment of inertia.  
 15 Q. Okay. And in describing your various graphs and charts  
 16 here, you frequently referred to center of gravity, moment  
 17 of inertia, lumped them together, didn't you?  
 18 A. Yes, I do.  
 19 Q. And let's look at -- the next exhibit is PX730. Is  
 20 that a chart you used with Mr. Romano to describe your  
 21 testing results, an example of your test data sheets?  
 22 A. I think it's one of them, yes.  
 23 THE COURT: What exhibit number?  
 24 MR. ETtinger: 730, Your Honor, PX730. It's  
 25 already been admitted.

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1 BY MR. ETtinger:  
 2 Q. And you see -- I should have brought the pointer -- the  
 3 MMI, bat MMI is shown right here on the data sheet, isn't  
 4 it, Mr. Baum?  
 5 A. That's where there is a space to enter it, yes.  
 6 Q. And what it says there is zero, doesn't it?  
 7 A. There is no entry. Zero is automatic.  
 8 Q. Zero means no entry, correct?  
 9 A. Right.  
 10 Q. And isn't it true, Mr. Baum, that there is no entry for  
 11 moment of inertia for any of the test data sheets underlying  
 12 any of the charts that you showed the jury in your  
 13 testimony?  
 14 A. That is correct.  
 15 Q. Now, you testified, as I recall, that your -- that back  
 16 in November of 1998 when you voted against a center of  
 17 gravity requirement, do I understand your testimony correct  
 18 that you were only against having a specific center of  
 19 gravity specified in the rule?  
 20 A. The proposal as presented was an improbable proposal.  
 21 Q. Mr. Baum, please answer my question.  
 22 A. I voted against it.  
 23 Q. Is it your testimony that the only thing -- you were  
 24 not against the center of gravity requirement, you were just  
 25 against having a specific number in the rule; is that your

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1 testimony?  
 2 A. Would you say that again, please.  
 3 Q. I want to understand your testimony to the jury. I  
 4 can't remember if it was Monday or Tuesday. Was it your  
 5 testimony that you were not against having a center of  
 6 gravity requirement, you were just against having a specific  
 7 number for center of gravity specified in the rule; is that  
 8 correct?  
 9 A. As I understand your question, that's correct.  
 10 Q. Isn't it true, Mr. Baum, that in fact in November of  
 11 1998 you were against having any center of gravity rule at  
 12 that time?  
 13 A. No, that is not correct.  
 14 Q. Wasn't it your view then that center of gravity was  
 15 something that should be studied later?  
 16 A. That is partially correct.  
 17 Q. Wasn't it your view then that a center of gravity rule  
 18 might complicate the issue far more than it should be?  
 19 A. The center of gravity --  
 20 Q. Please answer my question. Wasn't it your view that a  
 21 center of gravity rule might complicate the issue far more  
 22 than it should be; is that correct?  
 23 A. As you are stating it, I think that's correct.  
 24 Q. So you were against having a center of gravity rule in  
 25 the protocol in November of 1998, correct?

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1 A. No, I was not.  
 2 Q. Why don't you turn to your January 18, 2002 deposition  
 3 at Page 715, please.  
 4 A. What date was that?  
 5 Q. January 2002.  
 6 MR. NELSON: Page number?  
 7 MR. ETtinger: 715.  
 8 THE WITNESS: I have it.  
 9 BY MR. ETtinger:  
 10 Q. Let me read you the testimony starting at Line 14.  
 11 A. On which page?  
 12 Q. Page 715, Line 14. I'm going to go through Page 716  
 13 Line 8. Did you give the following testimony:  
 14 "Q. You showed Professor Sherwood examples of  
 15 testing, moving the weights along the bat, did you  
 16 not?  
 17 "A. Yes, I did.  
 18 "Q. And you did that in order to convince him  
 19 that there was no need for a center of gravity  
 20 requirement; isn't that true?  
 21 "A. That's not the case. What I said to him was  
 22 that if we used average wood, which was the  
 23 protocol at that point in time, that the center of  
 24 gravity was something we would have to study  
 25 later, its effect on the machine, because he

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1 wasn't ready for that. He didn't understand the  
 2 machine at that point in time.  
 3 "Q. Now, you have already testified you remember  
 4 talking on a conference call to the Baseball Rules  
 5 Committee in July of 1998. Isn't it true that on  
 6 that call you told the Baseball Rules Committee  
 7 that it was not necessary to have to add the  
 8 center of gravity component to the rule?  
 9 "A. What I said was at this point in time a  
 10 center of gravity rule might complicate this far  
 11 more than it should be complicated. The center of  
 12 gravity effect on bats is an issue that is  
 13 extraordinarily complex."  
 14 Was that your testimony?  
 15 A. Yes.  
 16 Q. Thank you. Now, let's talk some more about your  
 17 charts, Mr. Baum. The charts that you presented to the jury  
 18 here, you did not use any scientific sampling techniques to  
 19 decide which bats you were going to show on those charts,  
 20 did you?  
 21 A. Which chart are you on?  
 22 Q. Taking these charts as a group, you didn't use a  
 23 scientific sampling technique to pick the bats you were  
 24 going to depict on any of them, did you?  
 25 A. I'm not sure I understand your question. A scientific

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1 sampling technique to pick a bat to test?  
2 Q. Right. You have hundreds of bats in your facility;  
3 isn't that right, Mr. Baum?  
4 A. Yes.  
5 Q. And a scientist who used a scientific sampling  
6 technique would decide in a proper way which bats should be  
7 sampled in order to present something that's representative  
8 of a universe of bats; isn't that correct?  
9 A. Not necessarily if you're trying to test the property  
10 of one bat to another.  
11 Q. So is it your testimony to this jury that those charts  
12 that you showed them are only meaningful as to the  
13 particular bats that are on those charts and should not be  
14 generalized at all?  
15 A. No, that's not correct.  
16 Q. Okay. You did not use any scientifically valid  
17 sampling technique to try to choose representative bats to  
18 test, did you?  
19 A. There was no sampling technique.  
20 Q. Thank you. Let's talk about slope, Mr. Baum. Do you  
21 remember you used the term slope a lot, the slope of the  
22 line being relevant to assessing performance --  
23 THE COURT: Are you going to a new topic?  
24 MR. ETTINGER: Yes, Your Honor.  
25 THE COURT: I think we should take our morning

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1 recess, although we had one earlier, but the reporter needs  
2 one.  
3 (Jury out at 11:38 a.m.)  
4 THE COURT: Ten minutes.  
5 (Recess from 11:39 a.m. until 11:56 a.m.)  
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## 1. Introduction

EXHIBIT 100-100-100  
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Baum Manufacturing Inc., a corporation to be formed, will be established to manufacture sports equipment that utilizes a patented wood composite technology. This technology will enable the company to produce products which can (a) outperform currently available sports equipment and (b) simulate all the inherent traditional advantages of wood (i.e. acoustic, look, feel, and vibratory characteristics) while dramatically increasing the strength and durability of these products relative to its competition.

Over the last twenty years, sports equipment manufacturers have attempted to replace sports equipment made of wood with either aluminum or carbon fiber composites. Some of these products have met with great success due to the fact that they offer either enhanced durability or performance. The drawback of these products is that they have either (a) reached their maximum potential performance levels as in the case of aluminum products (i.e. baseball bats) or, (b) they have not effectively duplicated the advantages of wood products (i.e. look, feel, vibratory and acoustical performance). Baum Manufacturing proprietary wood composite technology can be tailored to outperform the high performance products currently available and to marry the advantages of wood-based sport equipment with the advantages of aluminum and composites.

Aluminum bats have replaced traditional wood bats in all levels of competition except the professional leagues because their long life makes them

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more economical despite their higher initial cost. Steve Baum, an experienced inventor and developer of unique products formed of composite materials, has spent the last several years developing a line of baseball bats which are substantially more durable than aluminum bats. One line of the "Baumbats," which are indistinguishable from wood bats in appearance and performance but outlast them by a factor of 50-100, have been tested by Major League Baseball teams in exhibition games and batting practice, have received limited approval for the 1993 season and have been approved by the NCAA and the National Federation of High School Athletic Associations. U.S. Patents have been issued covering the bats and hockey sticks and are pending on a golf club (see exhibits hereto). Patent applications are also pending in foreign countries. Baum Manufacturing Inc., plans to continue research and development directed toward applying the wood composite technology to other types of sports equipment. Baum is currently producing the bats in small numbers but requires additional capital to rapidly expand production to meet present demand and anticipated increased demand.

## A. Product Description

The first three products which have been fully developed and tested and ready for mass-production, are the high performance "Equalizer®," "Rocket®," and the AAA Pro-Model Baumbat. The "Rocket Softball Baumbat" is projected to be ready for production within four to six months.

1. The "Equalizer®" is more durable and substantially outperforms aluminum with regard to the number of hits and the distance of

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hits. The "Equalizer®" has twice the sweet spot size of aluminum and is the only durable high performance bat which can be made 5 oz. weight under length (i.e. a 34" 28 oz. bat). It retains the traditional "crack" sound of a wood bat and can be made to all legal weight and length requirements. "A hitters delight."

2. The "Rocket®" provides an alternative to the "Equalizer®" and maximizes the hitting distance as opposed to maximizing the sweet spot size. "A slugger's delight."

3. The AAA Pro-Model Baumbat which totally emulates a wood bat as to sound, performance, feel and vibration, yet is more durable and retains its hitting performance well beyond the deterioration point of normal hardwood or aluminum.

4. The Rocket Softball Baumbat is projected to be ready for production within four to six months. Although the softball market is larger than the baseball market, the interaction between a softball and a bat, for both fast pitch and slow pitch, is far less severe than that which exists with a hardball. The research was specifically directed toward solving the more difficult problem first, the hardball bat design, and to utilize that information regarding bat elasticity and collision effects to implement the proper design and material choice for an ultra high-performance softball bat. That information is now available, the design first phase is completed and tooling is underway.

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Information regarding the dynamic performance of baseball bats and discussions regarding the development of the Baumbat is has been described in numerous published articles and periodicals available upon request. This literature provides pertinent information regarding testing and the experiences of players with the bat and accurately tracks the stages of the product's development.

### B. Market Description

There exists an expansive market for the Baumbats. This is a result of the following factors:

1. Professional baseball will never switch at any level to aluminum bats
2. Baseball scouts and colleges are having an increasingly difficult time judging a player's ability to utilize the hardwood bat due to the extensive use of aluminum.

The aluminum bat, which, in fact, diminishes the art of hitting, is a poor instructional tool and cannot, nor will it ever, replicate the feel of a professional hardwood bat. As a result, a two-tier Baumbat system has been created. This system will provide the AAA Pro-Model for colleges and high school to train with which in turn will allow a baseball player to find the sweet spot properly (the sweet spot is the point on the bat at which 80% of the maximum energy transfer occurs, a very small area on professional bats) without forcing the teams to

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supply wood bats which have to be replaced regularly. At the second tier, so as not to be at a disadvantage during a game against hitters using other high-performance bats, the players would use the high-performance "Equalizer®" or "Rocket" Baumbat in actual competition. This is subject to the current NCAA proposed change which, if enacted, would require all bats to be "woodlike." If enacted the AAA Pro-Model Baumbat will become the bat of choice.

Due to the enthusiastic response to the AAA Pro-Model Bat, it has been suggested by many college coaches that if, in fact, a more durable wood composite bat would be made available that would perform exactly like and feel like traditional hardwood but would break less, they would be willing to switch their entire conference to such a bat so as to have complete consistency from the pro-level right down through high school. The only bat that can do this is the AAA Pro-Model Baumbat.

With the AAA Pro-Model Bat, Baum has been able to clone the wood bat yet it exceeds the durability of aluminum. Both the "Equalizer®" and the "Rocket®" improve on existing composite technology to create baseball bats which outperform all competitors' products currently available in the marketplace. Since the Baumbat is competitive with aluminum bats in terms of price, the company expects to be able to capture a significant share of the available baseball bat market.

#### C. Expected Growth

The "Equalizer®, Rocket®," and the AAA Pro-Model bats are presently

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available for sale and with sufficient capital infusion, the company will be able to increase daily production and sales efforts to meet the current and anticipated market demand. Within twelve months of the completion of this initial capital requirement, the company would be positioned to raise additional capital necessary to further enhance mass production of the Baumbats as well as complete research and development of future products, specifically a family of golf clubs, hockey sticks, and drum sticks.

**D. Financing Required**

The company will raise capital in the form of a two-stage equity offering. The first stage will be a private placement offering for a total of \$850,000, which will be in exchange for a 15% equity stake. The second stage is projected to be an offering in which a 20% equity stake in Baum Manufacturing Inc., will be exchanged for approximately \$4 million.

**II. The Business**

**A. Background**

Steve Baum of Traverse City, Michigan has worked for 25 years to develop and market products in the field of composites. Composites combine different engineering materials to create products which exhibit the best characteristics of each of the constituents. Early in his career, Mr. Baum pioneered the combination of steel and ceramics to create materials with the hardness of glass and the toughness of steel for products such as off wall

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cutters, snow plow scraper blades, tire studs, and the like. These inventions were licensed or sold to several major manufacturers.

In recent years, Baum has worked on products which combine the tensile strength of glass, carbon or Kevlar filaments with wood veneers and plastic resins to achieve materials with unique engineering properties. Synthetically formed filaments or fibers are commonly combine with plastic resins to create materials like fiberglass which are used in a variety of products that require high tensile strength and low weight such as structural components of modern airplanes, golf club shafts, and the like. While these materials provide excellent solutions for many applications, they have relatively low impact resistance and have not been successfully used in those products in which the structure must withstand repeated hard blows; the fibers break and produce a catastrophic failure of the structure.

Baum has been working for years to combine composites formed of resins and fibers with a third element, wood veneer, in such a way as to greatly improve their impact resistance. Baum has invented a class of impact sports implements—baseball bats, golf clubs, hockey sticks—which combine the strength and light weight of resin reinforced fabrics with the impact resistance of wood. These products are unique and are protected by issued and pending U.S. and foreign patents. (See exhibits hereto).

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## B. Market Plan

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## 1. Market Survey and Position

The market for high performance baseball and softball bats is constantly growing as technology improves and replaces prior products. This is the same pattern that has been experienced with skis, tennis rackets, golf clubs, athletic shoes, etc. Currently, the aluminum Easton EA-70 alloy aluminum bat is the perceived forerunner in the high-performance baseball bat market. It is interesting to note, however, that no manufacturers provide any test data regarding the bat's durability or suitability for a given performance level of play. In fact, most bats carry no information or warranty. The baseball bat market is truly a "let the buyer beware" market. X

Baseball bats may be divided into three categories: traditional hardwood, aluminum, and composites. Professional hardwood needs no further explanation except for the fact that there is a resurgence in growth of this market mainly due to the inadequacies of the aluminum bat to properly teach the fundamental of hitting, a fact reiterated by many published articles. It must also be noted that because of the results of intense research into the baseball bat phenomenon, Baum Manufacturing will also be able to produce solid hardwood bats to complement the AAA Pro-Model Baumbat for use by Major League players in games.

The aluminum bat is basically a hollow tube which radiates energy transfer by the compression distortion of the tube, at impact, into a slight egg-

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shape. This results in what is call the trampoline effect. Baum Research and Development Investigation indicates that the trampoline effect, in fact, does play in the energy transfer and is a contributing factor to the distance involved in ball travel. The aluminum manufacturers are currently limited by the existing alloys in their efforts to maximize the trampoline effect and minimize wall denting and premature durability failure. In fact, the original perceived value of aluminum bats of a long life has not been fully attained. Aluminum bats, at best, will last 500 hits before significant material degradation occurs. The aluminum sweet spot, despite claims to the contrary, is also very small (effective hitting area must be differentiated from true sweet spot size).

Composite baseball bats are hollow core shells which are meant to duplicate the actions of aluminum without the aluminum shortcomings. They also radiate by oval shape movement, although at this time, existing composite bats have not successfully replicated the hitting performance of aluminum bats. The composite bats consist of synthetic reinforcing fabric within a resin-based bonding system. The fabric usually consists of S-2 glass, E-glass, Kevlar, ceramic, graphite or some combination thereof. Thus far, composite bats have been unsuccessfully introduced in the marketplace by Easton and Mizuno. These composite baseball bats radiate their energy transfer poorly, vibrate significantly and do not produce the same feel which a batter has become accustomed to with aluminum.

The process of manufacturing the Baum Wood-Composite Baseball Bat is similar to the manufacturing of any aero-space high-tech composite. Molds and

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tooling are required to form the various materials into a finished product. Resins, aero-space fibers, wood and synthetic materials are all employed in a novel manner to produce a unique product at a competitive cost.

The high-performance models of the aluminum and composite baseball bats range in retail sale prices from \$95 to \$150. The technical innovations in baseball bats from wood to aluminum to composites have paved the way for the acceptance of a far more expensive tool. This window of opportunity is very wide as aluminum bat technology has reached its ultimate end and the manufacturers are desperately searching for composites to fill the need. The Baumbat is the ideal answer to that problem. The Baumbat has the design advantage of transferring energy on a localized spring basis rather than the oval distorting moment of aluminum and conventional composite bats. Thus the design can control the energy transfer to the ball and its materials can be adjusted to give any level of durability, feel, performance, vibration, etc. (i.e., the AAA Pro-Model Baumbat (exactly like wood) and the high performance models which out hit aluminum.

## 2. Schedule of Activities

As of November 30, 1992, low production tooling has been completed for the high-performance hardbat bat the "Equalizer®," in 35, 34.5, 34, and 33-inch lengths and tooling has been prepared for the AAA Pro-Model bat in 35, 34.5, 34, and 33-inch lengths. Within these lengths and physical shape, weights from 40 oz. to 27 oz. and lower can be obtained by simple internal core density changes.

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The AAA Pro-Model baseball bat received a professional baseball approval at the winter meetings held in Dec. 1992. This allows the Baum Wood AAA Pro-Model to be used at all levels in batting practice and select lower levels of professional baseball in games. As acceptance is gained and other models become available, the goal is to allow use in batting practice and games at all levels excluding Major League games as fast as production facilities can be expanded.

The high-performance "Equalizer®" and "Rocket®" models are ready for sale to colleges and high schools and are already approved under college and high school rules. These bats now need to be successfully test-marketed, fine-tuned, and then marketed on a large-scale during the 1993 season. Continuing research into the bat-ball collision and the refinement of recipe combinations, is essential during the next eighteen months. This will allow the maximization of product potential as far as its performance and durability as well as reducing the manufacturing costs to a minimum.

Sophisticated in-house testing facilities have been designed and constructed which allow precise testing and product change evaluation. The equipment can determine bat stiffness, bat strength, bat flexibility, resin stiffness, resin strength, resin impact resistance, temperature differential effects, the elasticity, size, length, width and durability of the sweet spot. In addition, a controlled environment test facility allows the acquisition of real time data regarding the bat-ball collision. These tests and test procedures are unique and proprietary and were designed to compliment and verify the standard tests which

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have been conducted by Tufts University under the direction of Professor Robert Collier on a broad brush basis. This effort must continue unabated, to provide information essential for cost reduction, ultimate performance criteria, ultimate durability criteria, softball material mix, production systems and equipment and design data. The analysis of professional hardwood bats and other competitive products and their limitations must be continued for technical reports for use by coaches. A significant amount of the capital required has been budgeted for this continuing research.

### 3. Product Pricing

One of the purposes of the continuing extensive research and development is to maintain costs by not over building or under building the composite for a particular level of play. A complete analysis of the manufacturing steps has been made and reliable manufacturing costs on a very conservative basis are included in the projections. The manufacturing stages, although not difficult, are detailed in nature and ultimately can be made very economical. It is interesting to note that the competitive composite baseball bats are selling for prices far exceeding the cost of the finest aluminum bat. Yet, the Baumbats, because of their unique, low-cost structure are clearly aimed at market sales prices with a strong profit at the same levels as that of aluminum. This can be accomplished because of the unique composite materials within the Baumbats utilizing the minimum of expensive materials, and the unique behavior and transfer of energy excellence of the Wood-Composite bat. All materials used within the Baumbats are readily available, although the fabrics are custom-designed and require extensive lead time. The levels of capital requirements

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presented within this report are sufficient to provide manufacturing capabilities to meet the projected sales quotas.

As mentioned earlier, the high-performance models of the aluminum and composite baseball bats range in retail team sale prices from \$95 to \$150. Since the per unit cost of the Baumbats range between \$38 and \$40, the Baumbats can be marketed to achieve a price point which is competitive with the existing market. The assumptions provided in the attached pro-forma assume per unit manufacturer's sales prices of between \$80-\$85. Since the organizational sales to Major League Baseball, the NCAA, High School Athletic Association, etc. do not require the use of manufacturer's representatives or a significant internal sales force, the Baumbats can be sold directly at the manufacturer's price of between \$80-\$85. By providing a superior product, at a price which is competitive with existing products in the marketplace, Baum Manufacturing, Inc. anticipates the capture of significant market share.

#### 4. Distribution and Sales

The exposure pre-marketing strategy currently employed, is to obtain professional baseball approval for the AAA Pro-Model series for minor league use and to utilize that goal as a springboard for the high-performance bat in the colleges and high schools which have already approved all bat models. The first major hurdle was overcome when the Major Leagues approved the bat for use in batting practice system-wide and approved the bat for use in the Instructional League in games. The publicity gained by professional baseball players using

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the Baumbat have already opened many college and high school doors. By focusing on organizational sales and utilizing these sales as effective endorsements for the Baumbat, Baum Manufacturing, Inc. can develop retail distribution channels after heightened consumer interest has been generated.

### B. Public Relations Plan

Mr. Baum has, to date, made little directed attempt to generate any publicity for his product, other than by demonstrating the bat for Major League Baseball players, yet Baum Manufacturing, Inc. has tapped into a market which involves intense media interest. Mr. Baum is already considered one of the most knowledgeable experts in the area of the physics surrounding the bat-ball collision. He has spoken to numerous baseball insiders and given presentations to the rules committees for Major League Baseball, NCAA, and the High School Athletic Association. By focusing this effort in conjunction with the endorsement of one or several retired major league players, Baum Manufacturing, Inc. can produce consumer awareness and increase consumer demand.

### C. Action Plan

As of the date of this plan, Baum Manufacturing, Inc. is producing the "Equalizer", "Rocket", and AAA Pro-Model bats in limited quantities at their manufacturing facility in Traverse City, Michigan. Their current total production level is approaching 500 bats per month. With the investment of the initial capital, Baum will be able to increase production levels to meet the anticipated

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demand for the 1993 baseball season of between 10 and 15 thousand bats per year. With the proceeds from the subsequent offering, Baum Manufacturing, Inc. will be able to increase their production levels and meet anticipated future demand for the 1995-96 seasons. Additionally, Baum Manufacturing, Inc. plans on continuing its research and development with the wood composite technology as it applies to golf clubs, hockey sticks, and other products through its technology center. In 1993, Baum Manufacturing, Inc. plans on building necessary molds and begin product testing with these new products. Research and development will also continue on developing new application for the wood composite technology.

#### D. Forecast

Attached hereto is the forecasted allocation of invested capital and forecasted statement of earnings before income taxes prepared by Gavigan, Burkhardt Freeman & Company of Traverse City, Michigan.

### Steve Baum Fact Sheet

- A federal judge ruled that Steve Baum did not have the requisite expertise to give testimony on the following issues:
  - a. "Topics requiring expertise in the safety of the sport of baseball or human reaction times, including:
    - i. The relationship of increased batted ball velocity to player safety.
    - ii. Minimum safe reaction times, including opinions on individual instances of player injury.
    - iii. Topics requiring expertise in the underlying physics of a baseball bat collision." (1-28-05 trial transcript from Baum v. NCAA, et.al. "Trial Tr." at 3-4) (Tab 1).
- A federal judge also ordered that "Baum may not testify on topics which are not properly subject to expert testimony because they rely on assessments in areas in which Mr. Baum has no expertise, including the proper performance standard for baseball bats used in NCAA games, including without limitation whether a performance standard must be wood-like or based on apples to apples comparison between wood and metal baseball bats of the same length and weight in order to be considered 'proper or rational.'" (1-28-05 Trial Tr. at 4-5) (Tab 1).
- The Baum Hitting Machine, a bat testing apparatus invented by Steve Baum which forms the basis for many of his opinions has *never been tested* against results in the field. 2/2/05 Trial Tr. at 136 (Tab 2).
- Many of the results from the Baum Hitting Machine report results wherein the ball appears to *speed up* as it travels further. This result is contrary to the laws of physics. 2-3-05 Trial Tr. at 39-41 (Tab 3).
- For years, Steve Baum had a chart purporting to show the differences between wood bats and aluminum bats on his website. This chart reflected the *average* results for wood bats and the *highest results* for aluminum bats. Steve Baum never disclosed to any governing body that he had done so. 2/2/05 Trial Tr. at 117-220 (Tab 4).
- In the early '90's, Steve Baum marketed the "Equalizer" bat, which he claimed "is more durable and substantially outperforms aluminum with regard to the number of hits and the distance of hits." (Tab 5 at 03795-03796; 2/3/05 Trial Tr. at 54-55 (Tab 6)).

1 Baum v. H&B, Excerpt from Friday, 1-28-05

2 **THE COURT:** Okay. I don't think there's any need  
3 for argument on the limitations on Mr. Baum's  
4 qualifications, and I'll tell you why. This has been a  
5 matter that the Court has considered, not for months, but  
6 for some years.

7 This trial can best be characterized as a  
8 runaway trial. The Court has been unable to exercise almost  
9 any control over it. After 27 days of testimony the Court  
10 was unable this morning to get a definitive statement from  
11 the plaintiffs as to who their remaining witnesses are in  
12 the case. For the last week we have spent more time going  
13 over admissibility of exhibits and what portions of  
14 deposition testimony may be read to the jury than we have in  
15 trial time.

16 When the proceedings, previous proceedings  
17 relating to Mr. Baum's testimony, proposed testimony were  
18 concluded, the Court prepared an Order in Limine Regarding  
19 Steve Baum as an Expert Witness which it did not enter. The  
20 Court is now going to read that order, and that order  
21 governs Mr. Baum's testimony. If anyone disputes it, at  
22 2:00 I'll conduct a hearing on a motion for reconsideration.

23 There has been a long-running dispute in this  
24 case between plaintiffs and defendants as to the extent to  
25 which Steve Baum may express expert opinions. See

1 Memorandum and Order Denying Defendants' Motion to Strike  
2 Experts filed September 26, 2003, Order Denying Defendants'  
3 Renewed Motion to Strike Experts filed November 20, 2003,  
4 Order filed November 3, 2004, and Notice of Motion Hearing  
5 filed November 17, 2004.

6 Important to the dispute is Baum's  
7 qualifications as an expert, described below, is Baum's  
8 testimony at a hearing on Tuesday, September 14, 2004, Pages  
9 93 to 107, and the National Collegiate Athletic Association  
10 Provisional Standing for Testing Baseball Bat Performance  
11 dated September 27, 1999, which is the central issue the  
12 case revolves around.

13 Baum's qualifications are as follows:

- 14 1. A B.S. degree in accounting and finance.
- 15 2. Experience as an inventor with plastics,  
16 metals, composite materials, including baseball bats and  
17 sports analysis and testing systems, all as reflected in the  
18 patents in which he is listed as an inventor.
- 19 3. Experience in design, manufacture, and  
20 sale of wood bats.
- 21 4. Experience in testing speed of batted  
22 balls through design, manufacture, and sale of the Baum  
23 Hitting Machine.
- 24 5. General experience as a baseball player  
25 and coach.

1           Given his limited qualifications, Baum at  
2       trial may offer opinion testimony in the scientific areas  
3       encompassed by his patents and regarding the design and  
4       operation of the Baum Hitting Machine and the results  
5       obtained through use as an apparatus for testing the speed  
6       and characteristics of baseball bats provided such testimony  
7       is otherwise relevant.

8           "Baum may not express an opinion on:

9           "(a) Topics requiring expertise in the  
10       history, character or operation of the sport of baseball or  
11       its regulatory bodies, including:

12           -- the history of the sport of baseball and  
13       the origins of the traditional rules of the sport.

14           -- the effect NCAA actions, or decisions not  
15       to act, have on the actions or decisions of any other  
16       baseball league or rulemaking body.

17           -- the reasons why the NCAA took, or declined  
18       to take, any particular action in connection with baseball  
19       bat performance standards.

20           (b) Topics requiring expertise in the safety  
21       of the sport of baseball or human reaction times, including:

22           -- the relationship of increased batted ball  
23       velocity to player safety.

24           -- minimum safe reaction times, including  
25       opinions on individual instances of player injury.

1 (c) Topics requiring expertise in the  
2 underlying physics of a baseball bat collision.

3 As to the following topics, Baum may testify  
4 only if the opinion is based on testing experience with the  
5 Baum Hitting Machine.

6 -- the meaning or validity of the BESR  
7 formula or the .728 BESR standard.

8 -- whether metal baseball bats exhibit  
9 "trampoline" or "hoop" effects when they strike a ball or  
10 how a baseball bat performance standard can account for  
11 these effects.

12 -- whether metal baseball bats exhibit a  
13 work-hardening effect over time, and if so, how, and to what  
14 extent, that effect impacts the performance of metal  
15 baseball bats.

16 -- the effect that a baseball bat's moment of  
17 inertia or center of gravity has on a baseball bat  
18 performance and how baseball bat performance standards can  
19 account for such an effect.

20 Baum may not testify on topics which are not  
21 properly subject to expert testimony because they rely on  
22 assessments in areas in which Mr. Baum has no expertise,  
23 including the proper performance standard for baseball bats  
24 used in NCAA games, including without limitation whether a  
25 performance standard must be wood-like or based on



1 apples-to-apples comparison between wood and metal baseball  
2 bats of the same length and weight in order to be considered  
3 "proper or rational."

4 Baum may not express an opinion on the  
5 following:

6 (a) That "the true measurement standard for  
7 the performance of baseball bats or softball bats are wood  
8 bats;"

9 (b) That "the use of high-performance metal  
10 bats destroys the balance and integrity of the game;"

11 (c) "that all tests used by the NCAA to  
12 supposedly mandate a wood-like standard were instead  
13 deliberately corrupted and did not provide fair and  
14 meaningful rules."

15 (d) That the NCAA rules "allowed the  
16 aluminum bats to continue their performance edge and hence  
17 market control;"

18 (e) That "wood and wood composite bats were  
19 effectively and practically blocked from use even under  
20 Defendants' supposed wood-like standards;"

21 (f) That there is a "discrepancy between the  
22 NCAA's stated purpose and the test standards it adopted;"

23 (g) That "any batted ball exit velocity over  
24 wood poses an increased safety threat."

25 (h) That "improper changes to the testing

1 protocol" have been "employed to mask the true comparison  
2 between wood and metal;"

3 (i) That "the testing protocol the NCAA  
4 adopted in September 1999 allowed the use of metal bats  
5 while effectively banning all wood and wood-like bats;" and.

6 (j) That "other amateur rule-making bodies  
7 have followed the NCAA's lead so that control of the  
8 rule-making process at the level of the NCAA determines what  
9 bats will be used in amateur baseball."

10 I'll hear any objections to that at 2:00.

11 MR. ETTINGER: Your Honor, just a quick question.  
12 On Mr. Baum's fact testimony on a number of issues I think  
13 we're going to take the -- we're going to believe, we do  
14 believe that he has no foundation to offer fact testimony on  
15 a lot of the things listed. We can just handle that at  
16 trial.

17 THE COURT: You will handle that at trial.

18 MR. ROMANO: Your Honor, will we get a copy of  
19 that order?

20 THE COURT: No. You can try and get it from the  
21 reporter.

22 MR. NORTHAM: Your Honor, do you wish all counsel  
23 to be present at 2:00 and at 4:00?

24 THE COURT: It's not necessary.

25 MR. NORTHAM: Thank you.

1 MR. HOWE: Thank you, Your Honor.

2 MR. ROMANO: Can we also -- well, we'll deal with  
3 it at 2:00, Your Honor, but --

4 THE COURT: You can give them a rough draft of  
5 that, can't you?

6 MR. ROMANO: I think one of the premises of the  
7 order, Your Honor -- I don't want to get into the argument  
8 now -- one of the premises of the order was restricting Mr.  
9 Baum to experience with the Baum Hitting Machine, but he has  
10 conducted tests on all kinds of machines, including baseball  
11 bats --

12 THE COURT: His testing experience I didn't say  
13 anything about it. I said -- his area of expertise with  
14 regard to testing machines I didn't say anything about.

15 MR. ROMANO: Okay. And one thing that confused me  
16 a little bit --

17 THE COURT: Yeah.

18 MR. ROMANO: -- to be quite honest with you, is  
19 that a lot of this stuff is historical fact of the actual  
20 rule-making process and he wasn't going to express an  
21 opinion on it. He was going to basically testify to what  
22 happened.

23 THE COURT: No.

24 MR. ROMANO: Just because somebody puts opinion --

25 THE COURT: No, he can't testify -- his

1 remembrance of what he saw or heard is hearsay. I mean  
2 we've had testimony from the people who were there. It  
3 would be cumulative.

4 MR. ROMANO: Your Honor, he participated in the  
5 rule-making process.

6 THE COURT: I'm sorry, it would be cumulative.

7 MR. ROMANO: Well, Your Honor, this is an  
8 important witness, and he was very -- I mean he was the  
9 witness who brought to light the idea that these bats could  
10 measurably be shown to outhit wood bats by specific amounts  
11 so he was urging that on the rule-making body. It's part of  
12 the legislative history.

13 THE COURT: No, whether he was urging it or not he  
14 can testify based upon his testing experience what occurred.  
15 He can also I suppose testify as to what he said to them at  
16 these meetings.

17 MR. NELSON: What about the fact, if I may,  
18 Your Honor, that Mr. Baum has made an extensive review of  
19 documents furnished in discovery by Sherwood and can state  
20 the facts as he sees them from those documents?

21 THE COURT: No. So what? Sherwood's documents  
22 are there. He can disagree with testing results based upon  
23 his experience.

24 MR. ROMANO: Okay. But based upon his review of  
25 the -- he's the only one that has more experience in using

1 the Baum Hitting Machine than Mr. Sherwood.

2 THE COURT: Well, he can testify as to what  
3 results he got from the machine.

4 MR. ROMANO: He should also be able to testify how  
5 the machine was used and look at the tests and say these  
6 tests weren't conducted properly.

7 THE COURT: He can't. He wasn't present.

8 MR. ROMANO: If it's apparent on the face of the  
9 test.

10 THE COURT: I don't know what you mean the test  
11 wasn't conducted properly. They didn't put the ball in  
12 right or they didn't hit the bat right or the computer  
13 wasn't right?

14 MR. ROMANO: One of the problems I'm having,  
15 Your Honor, maybe I'm thickheaded, but the process we have  
16 gone through on a number of occasions is before someone even  
17 testifies, and I understand why the Court wants to do this,  
18 we don't want to get something in front of the jury, but  
19 before someone testifies we make rulings on evidence then  
20 all of a sudden like happened this morning I think --

21 THE COURT: I just made the rulings on the  
22 evidence. If you start to ask him questions that  
23 Mr. Ettinger thinks are outside the bounds, we will have to  
24 deal with the question as it comes up.

25 MR. ROMANO: Okay, because what I'm concerned

1 about is all of a sudden I have these guidelines and I ask a  
2 question, you know, it makes it almost impossible -- I may  
3 lay a foundation for his ability --

4 **THE COURT:** You may.

5 **MR. ROMANO:** In fact, after you hear about his  
6 experience in testing and composites and all of that, you  
7 may change your mind and say, well, wait a minute, I may  
8 have been premature.

9 **THE COURT:** I don't think so. You get this  
10 transcript. You will see carefully. What I have said is he  
11 can't get up there and harangue and he can't get up there  
12 and be critical of the standard that the NCAA adopted. He  
13 can testify as to the technical aspects, but the final  
14 standard he can't say is a wrong standard for baseball bats.

15 **MR. ROMANO:** Well, wouldn't he be able to say if  
16 he looked at the standard that it was not a wood-like  
17 standard?

18 **THE COURT:** No. He can say in comparison to the  
19 results obtained from wood bats -- that wood bats have this  
20 level of performance based on his experience and the  
21 aluminum bats have that level of performance based on his  
22 experience and you can say are they consistent, does the  
23 standard adopted for aluminum bats limit their performance,  
24 according to the standard, to the standard he finds for wood  
25 bats. He can say that. That's technical.



1           **MR. ETTINGER:** You are saying based on the Baum  
2 Hitting Machine.

3           **THE COURT:** Based upon the results of the Baum  
4 Hitting Machine.

5           **MR. ROMANO:** Or any other testing that he may have  
6 conducted and other machines.

7           **THE COURT:** Sure, he can say that.

8           **MR. ETTINGER:** Well, Your Honor, one issue that  
9 your order didn't address, we can save this for trial, but  
10 for example, Mr. Baum purports to have done some crash dummy  
11 testing and he has no expertise in that area.

12           **THE COURT:** I don't know what you are talking  
13 about, crash dummy testing.

14           **MR. ETTINGER:** It's one of the issues that they  
15 intend to have him testify to.

16           **THE COURT:** What?

17           **MR. ETTINGER:** The results of some -- testing I  
18 think is too good of a word. He got some crash dummies and  
19 he shot some balls at them and he watched them go back and  
20 he's got videotape on it.

21           **THE COURT:** He doesn't have any experience in that  
22 area.

23           **MR. NELSON:** The jury would be able to see the  
24 effect on the crash dummies.

25           **THE COURT:** No, it's not relevant. It's not

1 relevant the effect on a crash dummy. It's not relevant.

2 MR. ROMANO: Your Honor, if it confirms what  
3 common sense tells us.

4 THE COURT: What?

5 MR. ROMANO: If it confirms what common sense  
6 tells us.

7 THE COURT: No. Well, if it's common sense, it's  
8 common sense. You can ask the jury to draw on their common  
9 sense.

10 MR. ROMANO: I can ask them to draw on their  
11 common sense, but why can't I have demonstrative evidence  
12 that translates how that common sense turns into reality?

13 MR. NELSON: Your Honor, I think we would like to  
14 address issues at 2:00, if we may.

15 THE COURT: No. This should not come as a  
16 surprise to you.

17 MR. ROMANO: Well, I -- we'll deal with it at  
18 2:00, Your Honor.

19 THE COURT: Okay. I will editorialize only to  
20 this extent. I cautioned you all along that if Baum was  
21 your sole expert on safety you were in deep trouble.

22 MR. ROMANO: Your Honor, there has already been  
23 evidence --

24 THE COURT: What?

25 MR. ROMANO: There is already evidence in the

1 record --

2 THE COURT: Well, fine, if there's evidence in the  
3 record you can use it.

4 MR. ROMANO: Let me just make this one point.  
5 There is evidence in the record the expert report of  
6 Dr. Crisco, which if you recall you didn't let me ask a lot  
7 of questions about, specifically says there is tons and tons  
8 of evidence that the severity of increased velocity causes  
9 substantial more injury.

10 THE COURT: Fine. Call Dr. Crisco, call  
11 Dr. Crisco, but Mr. Baum isn't competent to express that  
12 opinion. All he can say is I read Crisco's report and  
13 that's what it says, and if the report is in evidence, you  
14 can argue it to the jury.

15 MR. ROMANO: Thank you, Your Honor.

16 (Recess from 10:42 a.m. until : .m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

Stephen Baum - Cross  
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1 Hitting Machine. Do I have that right?

2 A. If you use the same bat with the same characteristics,  
3 if all those factors were equal, I would expect the  
4 player -- the ball off the player's bat to come off very  
5 close to what the machine showed, less the foam resistance  
6 of the hit.

7 Q. Now, in fact, nobody has ever taken bats, tested them  
8 on the Baum Hitting Machine, and then tested the same bats  
9 in the field to see if they even approximately get the same  
10 hit speeds as the Baum Hitting Machine; correct?

11 A. When you say anybody, I don't have any idea. I thought  
12 Jim Sherwood did that.

13 Q. You're not aware of anybody doing that, correct?

14 A. As I said, I thought that Sherwood did.

15 Q. Why don't you turn to your September 13 testimony at  
16 Page 50.

17 THE COURT: Wait, maybe we can -- you said you  
18 thought. Do you have any personal knowledge that anybody,  
19 anybody -- forget about Sherwood, anybody has done what  
20 Mr. Ettinger says?

21 THE WITNESS: No.

22 THE COURT: Okay. Let's go ahead.

23 BY MR. ETTINGER:

24 Q. Now, your testimony to Mr. Romano was, quite clearly,  
25 that center of gravity of the bat has an effect on batted

Stephen Baum - Cross  
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1 that was shown the jury of yours yesterday, and the reason I  
2 picked it out and I wanted to ask you about it, first of  
3 all, you see this is a wood bat, correct?

4 A. Yes.

5 Q. And you see it's bending markedly, don't you?

6 A. What?

7 Q. It's bending?

8 A. It's broken. That's what the arrow is pointing to.

9 Q. Excuse me?

10 A. It's broken.

11 Q. So it's your testimony this is a broken bat?

12 A. The player hit it on the end of the bat and broke the  
13 bat. There's a fracture point there of the paint.

14 Q. That is your testimony?

15 A. That is my testimony.

16 Q. Okay. That's all I've got on that then.

17 I want to talk about the Baum Hitting Machine a  
18 little bit more, Mr. Baum. Now, just to set the stage, the  
19 Baum Hitting Machine I think you testified measures the  
20 speed of the batted ball through light traps at  
21 three points, correct, 9 inches, 13 inches and 6 feet,  
22 correct?

23 A. Yes, that's correct.

24 Q. And you are aware that 80 percent of the time the speed  
25 measurement at 13 inches, 13 inches away from the contact is

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1 actually faster, registers faster than it is at 9 inches,  
2 correct?

3 A. I am not in agreement with your 80 percent.

4 Q. Mr. Baum, why don't you turn to your  
5 September 14th hearing at Page 39.

6 A. I have it.

7 Q. Page 39, as I said, Line 14. Let me ask you whether  
8 this was your testimony:

9 "Q. Isn't it true that our expert found, taking  
10 your data and calculating it, that 80 percent of  
11 the time it showed a higher velocity at the  
12 second trap?

13 "A. That could very well be.

14 "Q. Do you have any basis for disputing that?

15 "A. I haven't checked the figures.

16 "Q. So as far as you know, they are right?

17 "A. As far as I know, they are right."

18 Is that the testimony?

19 A. Yes.

20 Q. Now, when your machine registers a higher speed at  
21 six feet, then you disqualify the hit, don't you?

22 A. Yes, we do.

23 Q. And the reason you do that is it must be wrong,  
24 correct?

25 A. Yes, it must be wrong.

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1 Q. It must be wrong because the ball doesn't speed up  
2 after you hit it; it can only slow down due to air  
3 resistance, correct?

4 A. That's correct.

5 Q. That's a basic law of physics, correct?

6 A. Yes.

7 Q. And, however, if you find that the ball is going faster  
8 at 13 inches as compared to 9 inches, you don't disqualify  
9 the hit, do you?

10 A. I thoroughly explained that the other day.

11 Q. Could you please answer my question? Isn't it true  
12 that if the ball is going faster at 13 inches than 9 inches  
13 you don't disqualify the hit?

14 A. That is true.

15 Q. Okay. Why don't we take a look at DX318.

16 MR. ETTINGER: Joe, if you could just put this  
17 first test sheet up on the screen just so the jury  
18 understands what we are talking about very briefly.

19 BY MR. ETTINGER:

20 Q. Mr. Baum, on this first test sheet, this is the 9-inch  
21 reading, the 94.317, and this is the 13-inch reading,  
22 93.819, on the first sheet; is that correct?

23 A. Yes.

24 Q. So in that case it appears that the ball is slowing  
25 down like you would expect, correct?

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1 A. So I could do my test, that is correct.

2 Q. So rather than use bats that have actually been used in  
3 games, you called him and made orders for bats with these  
4 particular characteristics; correct?

5 A. To get two comparisons, certainly, identical.

6 THE COURT: Wait a minute. That question is  
7 argumentative, when you start, "Rather." Just ask him the  
8 question.

9 MR. ETTINGER: Your Honor, I'm just trying to make  
10 a contrast. I don't mean it to be argumentative.

11 THE COURT: But the way you're posing your  
12 questions, you're arguing with him.

13 MR. ETTINGER: I'll try it this way, Your Honor, I  
14 don't know if this is going to be a problem but --

15 BY MR. ETTINGER:

16 Q. Mr. Baum, instead of taking bats that have actually  
17 been used in games, in these cases, you ordered bats  
18 particularly from Mr. MacKay with the characteristics you  
19 wanted to make your charts; correct?

20 A. For a direct comparison, that is correct.

21 Q. Mr. Baum, you have on your website a chart that  
22 compares the performance of aluminum and wood bats, isn't  
23 that right?

24 A. Yes, I do.

25 Q. Why don't we look at that. That's DX312. If we turn



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1 to the third page of the exhibit that says Actual Test  
2 Results. And this chart, Mr. Baum, has a line for aluminum,  
3 for metal, and a line that represents wood and a Baum bat,  
4 is that right?

5 A. That is correct.

6 Q. And this chart has been on your website since about  
7 1998, is that right?

8 A. Roughly.

9 Q. And you've sent this chart, among others, to the NCAA  
10 and the high school federation, have you not?

11 A. I sent them a multitude of information. I assume this  
12 is part of it.

13 Q. Okay. And the underlying data -- and by the way, just  
14 to be clear, so, what we have here is the higher line is  
15 supposed to be metal, and the lower line is supposed to be  
16 wood and Baum in terms of exit velocity; correct?

17 A. Yes.

18 Q. And, in fact, in coming up with these numbers, each of  
19 those numbers is actually based on multiple test results for  
20 the given bat at the given impact point; correct? Let me  
21 back up, just to be clear.

22 A. I don't understand.

23 Q. Let me back up. Am I correct that this line represents  
24 one wood bat and one Baum bat, the bottom line here?

25 A. I think it does. I can't recall.

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1 Q. And the top line represents one aluminum bat; correct?

2 A. I think it does, but I -- that's been many years ago.

3 Q. And the reason there's all these different numbers is  
4 these represent different impact points along the bat; isn't  
5 that right?

6 A. That's the profiling the bat, yes.

7 Q. But for each of these points, there were multiple tests  
8 done and multiple results; isn't that right?

9 A. There should have been a series of tests, yes.

10 Q. And isn't it true, Mr. Baum, that in coming up with the  
11 numbers you put on this chart, you took the average of the  
12 wood bat results and the Baum bat results, and you took the  
13 highest figure in each case for the aluminum bat results.

14 A. I am not sure that's correct in this chart.

15 Q. Why don't you turn, Mr. Baum, to your testimony, it's  
16 on September 14 of last year, page 48.

17 A. I have it.

18 Q. Didn't the following, wasn't there the following  
19 testimony starting on Line 11:

20 "Q. Now, in fact, isn't it true that the  
21 underlying data for this chart which you did not  
22 put on the web and did not send out shows that you  
23 used the highest results for aluminum bats and  
24 average results for wood bats and the Baum bat?

25 "A. That is correct."

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1 A. Then if that's the information you showed me, that's  
2 correct.

3 Q. And in fact, does this refresh your recollection that  
4 you put that chart out on the web but you never disclosed  
5 that the aluminum numbers were the highest in each case, and  
6 the wood and Baum numbers were average in each case,  
7 correct?

8 A. What you're missing in this is --

9 THE COURT: No, just answer the question.

10 Mr. Romano will have an opportunity on redirect to ask you  
11 questions about this. Go ahead.

12 THE WITNESS: What was your question again,  
13 please?

14 BY MR. ETTINGER:

15 Q. And in fact, you never disclosed to the people who read  
16 your website or to the NCAA --

17 THE COURT: You did not disclose, not "never."  
18 Did not disclose.

19 MR. ETTINGER: Thank you, Your Honor. I'll try to  
20 curb my enthusiasm, Your Honor.

21 BY MR. ETTINGER:

22 Q. And in fact, you did not disclose to the NCAA or the  
23 high school federation or on your website that the aluminum  
24 numbers were the highest numbers and the wood and Baum  
25 numbers were average numbers, correct?

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## 1. Introduction

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Baum Manufacturing Inc., a corporation to be formed, will be established to manufacture sports equipment that utilizes a patented wood composite technology. This technology will enable the company to produce products which can (a) outperform currently available sports equipment and (b) simulate all the inherent traditional advantages of wood (i.e. acoustic, look, feel, and vibratory characteristics) while dramatically increasing the strength and durability of these products relative to its competition.

Over the last twenty years, sports equipment manufacturers have attempted to replace sports equipment made of wood with either aluminum or carbon fiber composites. Some of these products have met with great success due to the fact that they offer either enhanced durability or performance. The drawback of these products is that they have either (a) reached their maximum potential performance levels as in the case of aluminum products (i.e. baseball bats) or, (b) they have not effectively duplicated the advantages of wood products (i.e. look, feel, vibratory and acoustical performance). Baum Manufacturing proprietary wood composite technology can be tailored to outperform the high performance products currently available and to marry the advantages of wood-based sport equipment with the advantages of aluminum and composites.

Aluminum bats have replaced traditional wood bats in all levels of competition except the professional leagues because their long life makes them

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more economical despite their higher initial cost. Steve Baum, an experienced inventor and developer of unique products formed of composite materials, has spent the last several years developing a line of baseball bats which are substantially more durable than aluminum bats. One line of the "Baumbats," which are indistinguishable from wood bats in appearance and performance but outlast them by a factor of 50-100, have been tested by Major League Baseball teams in exhibition games and batting practice, have received limited approval for the 1993 season and have been approved by the NCAA and the National Federation of High School Athletic Associations. U.S. Patents have been issued covering the bats and hockey sticks and are pending on a golf club (see exhibits hereto). Patent applications are also pending in foreign countries. Baum Manufacturing Inc., plans to continue research and development directed toward applying the wood composite technology to other types of sports equipment. Baum is currently producing the bats in small numbers but requires additional capital to rapidly expand production to meet present demand and anticipated increased demand.

#### A. Product Description

The first three products which have been fully developed and tested and ready for mass-production, are the high performance "Equalizer®, Rocket®," and the AAA Pro-Model Baumbat. The "Rocket Softball Baumbat" is projected to be ready for production within four to six months.

1. The "Equalizer®" is more durable and substantially outperforms aluminum with regard to the number of hits and the distance of

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### PRESENTATION FOR DISCUSSION

hits. The "Equalizer" has twice the sweet spot size of aluminum and is the only durable high performance bat which can be made 5 oz. weight under length (i.e. a 34" 29 oz. bat). It retains the traditional "crack" sound of a wood bat and can be made to all legal weight and length requirements. "A hitters delight."

2. The "Rocket" provides an alternative to the "Equalizer" and maximizes the hitting distance as opposed to maximizing the sweet spot size. "A slugger's delight."

3. The AAA Pro-Model Baumbat which totally emulates a wood bat as to sound, performance, feel and vibration, yet is more durable and retains its hitting performance well beyond the deterioration point of normal hardwood or aluminum.

4. The Rocket Softball Baumbat is projected to be ready for production within four to six months. Although the softball market is larger than the baseball market, the interaction between a softball and a bat, for both fast pitch and slow pitch, is far less severe than that which exists with a hardball. The research was specifically directed toward solving the more difficult problem first, the hardball bat design, and to utilize that information regarding bat elasticity and collision effects to implement the proper design and material choice for an ultra high-performance softball bat. That information is now available, the design first phase is completed and tooling is underway.

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Information regarding the dynamic performance of baseball bats and discussions regarding the development of the Baumbat is has been described in numerous published articles and periodicals available upon request. This literature provides pertinent information regarding testing and the experiences of players with the bat and accurately tracks the stages of the product's development.

### B. Market Description

There exists an expansive market for the Baumbat. This is a result of the following factors:

1. Professional baseball will never switch at any level to aluminum bats.
2. Baseball scouts and colleges are having an increasingly difficult time judging a player's ability to utilize the hardwood bat due to the extensive use of aluminum.

The aluminum bat, which, in fact, diminishes the art of hitting, is a poor instructional tool and cannot, nor will it ever, replicate the feel of a professional hardwood bat. As a result, the two-tier Baumbat system has been created. This system will provide the AAA Pro-Model for colleges and high school to train with which in turn will allow a baseball player to find the sweet spot properly (the sweet spot is the point on the bat at which 80% of the maximum energy transfer occurs, a very small area on professional bats) without forcing the teams to

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supply wood bats which have to be replaced regularly. At the second tier, so as not to be at a disadvantage during a game against hitters using other high-performance bats, the players would use the high-performance "Equalizer®" or "Rocket®" Baumbat in actual competition. This is subject to the current NCAA proposed change which, if enacted, would require all bats to be "woodlike." If enacted the AAA Pro-Model Baumbat will become the bat of choice.

Due to the enthusiastic response to the AAA Pro-Model Bat, it has been suggested by many college coaches that if, in fact, a more durable wood composite bat would be made available that would perform exactly like and feel like traditional hardwood but would break less, they would be willing to switch their entire conference to such a bat so as to have complete consistency from the pro-level right down through high school. The only bat that can do this is the AAA Pro-Model Baumbat.

With the AAA Pro-Model Bat, Baum has been able to clone the wood bat yet it exceeds the durability of aluminum. Both the "Equalizer®" and the "Rocket®" improve on existing composite technology to create baseball bats which outperform all competitors' products currently available in the marketplace. Since the Baumbat is competitive with aluminum bats in terms of price, the company expects to be able to capture a significant share of the available baseball bat market.

#### C. Expected Growth

The "Equalizer®", "Rocket®", and the AAA Pro-Model bats are presently

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available for sale and with sufficient capital infusion, the company will be able to increase daily production and sales efforts to meet the current and anticipated market demand. Within twelve months of the completion of this initial capital requirement, the company would be positioned to raise additional capital necessary to further enhance mass production of the Baumbats as well as complete research and development of future products, specifically a family of golf clubs, hockey sticks, and drum sticks.

**D. Financing Required**

The company will raise capital in the form of a two-stage equity offering. The first stage will be a private placement offering for a total of \$850,000, which will be in exchange for a 15% equity stake. The second stage is projected to be an offering in which a 20% equity stake in Baum Manufacturing Inc. will be exchanged for approximately \$4 million.

**II. The Business**

**A. Background**

Steve Baum of Traverse City, Michigan has worked for 25 years to develop and market products in the field of composites. Composites combine different engineering materials to create products which exhibit the best characteristics of each of the constituents. Early in his career, Mr. Baum pioneered the combination of steel and ceramics to create materials with the hardness of glass and the toughness of steel for products such as oil well

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cutters, snow plow scraper blades, fire studs, and the like. These inventions were licensed or sold to several major manufacturers.

In recent years, Baum has worked on products which combine the tensile strength of glass, carbon or Kevlar filaments with wood veneers and plastic resins to achieve materials with unique engineering properties. Synthetically formed filaments or fibers are commonly combine with plastic resins to create materials like fiberglass which are used in a variety of products that require high tensile strength and low weight; such as structural components of modern airplanes, golf club shafts, and the like. While these materials provide excellent solutions for many applications, they have relatively low impact resistance and have not been successfully used in those products in which the structure must withstand repeated hard blows; the fibers break and produce a catastrophic failure of the structure.

Baum has been working for years to combine composites formed of resins and fibers with a third element, wood veneer, in such a way as to greatly improve their impact resistance. Baum has invented a class of impact sports implements—baseball bats, golf clubs, hockey sticks—which combine the strength and light weight of resin reinforced fabrics with the impact resistance of wood. These products are unique and are protected by issued and pending U.S. and foreign patents. (See exhibits hereto).

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## B. Market Plan

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## 1. Market Survey and Position

The market for high performance baseball and softball bats is constantly growing as technology improves and replaces prior products. This is the same pattern that has been experienced with skis, tennis rackets, golf clubs, athletic shoes, etc. Currently, the aluminum Easton EA-70 alloy aluminum bat is the perceived forerunner in the high-performance baseball bat market. It is interesting to note, however, that no manufacturers provide any test data regarding the bat's durability or suitability for a given performance level of play. In fact, most bats carry no information or warranty. The baseball bat market is truly a "let the buyer beware" market. X

Baseball bats may be divided into three categories: traditional hardwood, aluminum, and composites. Professional hardwood needs no further explanation except for the fact that there is a resurgence in growth of this market mainly due to the inadequacies of the aluminum bat to properly teach the fundamental of hitting, a fact reiterated by many published articles. It must also be noted that because of the results of intense research into the baseball bat phenomenon, Baum Manufacturing will also be able to produce solid hardwood bats to complement the AAA Pro-Model Baumbat for use by Major League players in games.

The aluminum bat is basically a hollow tube which radiates energy transfer by the compression distortion of the tube, at impact, into a slight egg-

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shape. This results in what is call the trampoline effect. Baum Research and Development Investigation indicates that the trampoline effect, in fact, does play in the energy transfer and is a contributing factor to the distance involved in ball travel. The aluminum manufacturers are currently limited by the existing alloys in their efforts to maximize the trampoline effect and minimize wall denting and premature durability failure. In fact, the original perceived value of aluminum bats of a long life has not been fully attained. Aluminum bats, at best, will last 500 hits before significant material degradation occurs. The aluminum sweet spot, despite claims to the contrary, is also very small (effective hitting area must be differentiated from true sweet spot size).

Composite baseball bats are hollow core shells which are meant to duplicate the actions of aluminum without the aluminum shortcomings. They also radiate by oval shape movement, although at this time, existing composite bats have not successfully replicated the hitting performance of aluminum bats. The composite bats consist of synthetic reinforcing fabric within a resin-based bonding system. The fabric usually consists of S-2 glass, E-glass, Kevlar, ceramic, graphite or some combination thereof. Thus far, composite bats have been unsuccessfully introduced in the marketplace by Easton and Mizuno. These composite baseball bats radiate their energy transfer poorly, vibrate significantly and do not produce the same feel which a batter has become accustomed to with aluminum.

The process of manufacturing the Baum Wood-Composite Baseball Bat is similar to the manufacturing of any aero-space high-tech composite. Molds and

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tooling are required to form the various materials into a finished product. Resins, aero-space fibers, wood and synthetic materials are all employed in a novel manner to produce a unique product at a competitive cost.

The high-performance models of the aluminum and composite baseball bats range in retail sale prices from \$95 to \$150. The technical innovations in baseball bats from wood to aluminum to composites have paved the way for the acceptance of a far more expensive tool. This window of opportunity is very wide as aluminum bat technology has reached its ultimate end and the manufacturers are desperately searching for composites to fill the need. The Baumbat is the ideal answer to that problem. The Baumbat has the design advantage of transferring energy on a localized spring basis rather than the oval distorting moment of aluminum and conventional composite bats. Thus the design can control the energy transfer to the ball and its materials can be adjusted to give any level of durability, feel, performance, vibration, etc. (i.e., the AAA Pro-Model Baumbat (exactly like wood) and the high performance models which out hit aluminum.

## 2. Schedule of Activities

As of November 30, 1992, low production tooling has been completed for the high-performance hardball bat the "Equalizer®" in 35, 34.5, 34, and 33-inch lengths and tooling has been prepared for the AAA Pro-Model bat in 35, 34.5, 34, and 33-inch lengths. Within these lengths and physical shape, weights from 40 oz. to 27 oz. and lower can be attained by simple internal core density changes.

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The AAA Pro-Model baseball bat received a professional baseball approval at the winter meetings held in Dec. 1992. This allows the Baum Wood AAA Pro-Model to be used at all levels in batting practice and select lower levels of professional baseball in games. As acceptance is gained and other models become available, the goal is to allow use in batting practice and games at all levels excluding Major League games as fast as production facilities can be expanded.

The high-performance "Equalizer®" and "Rocket®" models are ready for sale to colleges and high schools and are already approved under college and high school rules. These bats now need to be successfully test-marketed, fine-tuned, and then marketed on a large-scale during the 1993 season. Continuing research into the bat-ball collision and the refinement of recipe combinations, is essential during the next eighteen months. This will allow the maximization of product potential as far as its performance and durability as well as reducing the manufacturing costs to a minimum.

Sophisticated in-house testing facilities have been designed and constructed which allow precise testing and product change evaluation. The equipment can determine bat stiffness, bat strength, bat flexibility, resin stiffness, resin strength, resin impact resistance, temperature differential effects, the elasticity, size, length, width and durability of the sweet spot. In addition, a controlled environment test facility allows the acquisition of real time data regarding the bat-ball collision. These tests and test procedures are unique and proprietary and were designed to compliment and verify the standard tests which

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have been conducted by Tufts University under the direction of Professor Robert Collier on a broad brush basis. This effort must continue unabated, to provide information essential for cost reduction, ultimate performance criteria, ultimate durability criteria, softball material mix, production systems and equipment and design data. The analysis of professional hardwood bats and other competitive products and their limitations must be continued for technical reports for use by coaches. A significant amount of the capital required has been budgeted for this continuing research.

### 3. Product Pricing

One of the purposes of the continuing extensive research and development is to maintain costs by not over building or under building the composite for a particular level of play. A complete analysis of the manufacturing steps has been made and reliable manufacturing costs on a very conservative basis are included in the projections. The manufacturing stages, although not difficult, are detailed in nature and ultimately can be made very economical. It is interesting to note that the competitive composite baseball bats are selling for prices far exceeding the cost of the finest aluminum bat. Yet, the Baum bats, because of their unique, low-cost structure are clearly aimed at market sales prices with a strong profit at the same levels as that of aluminum. This can be accomplished because of the unique composite materials within the Baum bats utilizing the minimum of expensive materials, and the unique behavior and transfer of energy excellence of the Wood-Composite bat. All materials used within the Baum bats are readily available, although the fabrics are custom-designed and require extensive lead time. The levels of capital requirements

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presented within this report are sufficient to provide manufacturing capabilities to meet the projected sales quotas.

As mentioned earlier, the high-performance models of the aluminum and composite baseball bats range in retail team sale prices from \$95 to \$150. Since the per unit cost of the Baum bats range between \$38 and \$40, the Baum bats can be marketed to achieve a price point which is competitive with the existing market. The assumptions provided in the attached pro-forma assume per unit manufacturer's sales prices of between \$80-\$85. Since the organizational sales to Major League Baseball, the NCAA, High School Athletic Association, etc. do not require the use of manufacturer's representatives or a significant internal sales force, the Baum bats can be sold directly at the manufacturer's price of between \$80-\$85. By providing a superior product, at a price which is competitive with existing products in the marketplace, Baum Manufacturing, Inc. anticipates the capture of significant market share.

#### 4. Distribution and Sales

The exposure pre-marketing strategy currently employed, is to obtain professional baseball approval for the AAA Pro-Model series for minor league use and to utilize that goal as a springboard for the high-performance bat in the colleges and high schools which have already approved all bat models. The first major hurdle was overcome when the Major Leagues approved the bat for use in batting practice system-wide and approved the bat for use in the Instructional League in games. The publicity gained by professional baseball players using

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the Baumbat have already opened many college and high school doors. By focusing on organizational sales and utilizing these sales as effective endorsements for the Baumbat, Baum Manufacturing, Inc. can develop retail distribution channels after heightened consumer interest has been generated.

### B. Public Relations Plan

Mr. Baum has, to date, made little directed attempt to generate any publicity for his product, other than by demonstrating the bat for Major League Baseball players, yet Baum Manufacturing, Inc. has tapped into a market which involves intense media interest. Mr. Baum is already considered one of the most knowledgeable experts in the area of the physics surrounding the bat-ball collision. He has spoken to numerous baseball insiders and given presentations to the rules committees for Major League Baseball, NCAA, and the High School Athletic Association. By focusing this effort in conjunction with the endorsement of one or several retired major league players, Baum Manufacturing, Inc. can produce consumer awareness and increase consumer demand.

### C. Action Plan

As of the date of this plan, Baum Manufacturing, Inc. is producing the "Equalizer", "Rocket", and AAA Pro-Model bats in limited quantities at their manufacturing facility in Traverse City, Michigan. Their current total production level is approaching 500 bats per month. With the investment of the initial capital, Baum will be able to increase production levels to meet the anticipated

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demand for the 1993 baseball season of between 10 and 15 thousand bats per year. With the proceeds from the subsequent offering, Baum Manufacturing, Inc. will be able to increase their production levels and meet anticipated future demand for the 1995-96 seasons. Additionally, Baum Manufacturing, Inc. plans on continuing its research and development with the wood composite technology as it applies to golf clubs, hockey sticks, and other products through its technology center. In 1993, Baum Manufacturing, Inc. plans on building necessary molds and begin product testing with these new products. Research and development will also continue on developing new application for the wood composite technology.

#### D. Forecast

Attached here to is the forecasted allocation of invested capital and forecasted statement of earnings before income taxes prepared by Gavigan, Burkhardt Freeman & Company of Traverse City, Michigan.

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1 A. We gave them everything that we knew at the time.

2 Q. To the best of your ability to be truthful, correct?

3 A. Well, certainly.

4 Q. Why don't you turn -- and this document talks about  
5 your AAA Pro model, and it also talks about your Equalizer  
6 high-performance model, does it not?

7 A. Yes, it does.

8 Q. Why don't you turn to Page 3795.

9 A. I have it.

10 Q. Actually, first, 3793, the table of contents. Do you  
11 see there product description, it describes four bats, the  
12 Equalizer bat, that's the high-performance bat?

13 A. Yes.

14 Q. And the Rocket bat, that's the high-performance bat  
15 used for training?

16 A. Yes.

17 Q. And the AAA Pro model, that's the bat that you are  
18 currently selling?

19 A. That's the wood-like major league bat.

20 Q. Right. And the Softball Rocket bat, that's another bat  
21 for softball?

22 A. Yes.

23 Q. Okay. Now, why don't you turn to 3795. I want to look  
24 at the language at the very bottom of the page going to the  
25 top of the next page. It says there the Equalizer is more

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1 durable and substantially outperforms aluminum with regard  
2 to the number of hits and the distance of hits. Do you see  
3 that language?

4 A. I see it.

5 Q. I assume that was truthful?

6 A. At the time it was, the best we knew.

7 Q. Okay. Now, why don't you turn then to Page 3797, the  
8 last paragraph. Now, what it says here, going down  
9 two sentences, that your system will provide the AAA Pro  
10 model for colleges and high schools to train with; do you  
11 see that?

12 A. Yes, I do.

13 Q. Again, that's the bat, the one bat that you are  
14 currently selling that this -- that's your wood-like bat,  
15 you are saying here it will be used for colleges and high  
16 schools to train with, correct?

17 A. Yes.

18 Q. Why don't you turn to the next page, and look at the  
19 very same, the rest of that paragraph.

20 MR. ETTINGER: Joe, if you could blow it up.

21 BY MR. ETTINGER:

22 Q. It says in the second line the players would use the  
23 high-performance Equalizer or Rocket Baum bat in actual  
24 competition. So what you were saying here is, you are  
25 saying this bat, AAA Pro model, would be used for college